

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Monday, April 2, 2001

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; N. Millner, Deputy Clerk; and CHP officer S. Aldridge, Bailiff.

- A091591      The People,  
                  v.  
                  Robert Calvin Holmes, Jr.  
Cause called and argued by Jonathan D. Soglin, counsel for appellant, and Rene A. Chacon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A090448      Nancy Weres,  
                  v.  
                  Oleh Weres.  
Cause called and argued by Lynn S. Young, counsel for appellant, and Robert E. Blevans, counsel for respondent. Cause ordered submitted.
- A091461      International Federation of Professional and Technical Engineers, et al.,  
                  v.  
                  John L. Martin, et al.  
Cause called and argued by Duane W. Reno, counsel for appellants, and G. Scott Emblidge, counsel for respondents. Cause ordered submitted.
- A090288      Karen Wise,  
                  v.  
                  OEA Aerospace, Inc.;  
                  National Union Fire Insurance Company.  
Cause called and argued by Clark W. Patten, counsel for appellant, and Chris Baker, counsel for respondent. Cause ordered submitted.

A088101

The People,

v.

Raymone D. Jimmerson.

Cause called and argued by Janice Lagerlof, counsel for appellant, and Allan Yannow, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, April 2, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and L. Cabral, court security.

- A090493      Twin Peaks Improvement Association, et al.,  
v.  
City and County of San Francisco, et al.;  
Sutro Tower Incorporated.  
Cause called and argued by Laurens H. Silver, counsel for appellants; Audry Pearson, counsel for respondents City and County of San Francisco, et al.; and Craig Stewart, counsel for respondent Sutro Tower Inc. Cause ordered submitted.
- A088892      My Friends, My Family, My Community,  
v.  
Fairmont Insurance Company, et al.  
Cause called and argued by Harold M. Jaffe, counsel for appellant, and Joe Mascovich, counsel for respondent. Cause ordered submitted.
- A089102      International Paper Company, et al.,  
v.  
Affiliated FM Insurance Company, et al.  
Cause called and argued by Robert H. Shulman, counsel for appellants, and Julia Molander, counsel for respondents First State Insurance Company, et al.; Brandt L. Wolkin, counsel for respondents Century Indemnity Company, et al.; and Kevin McCurdy, counsel for respondents AIU Insurance Company, et al. Cause ordered submitted.

Court recessed until Tuesday, April 3, 2001 at 9:00 a.m.

MINUTES

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Tuesday, April 3, 2001

Division Two

**A093893/A093894 -- Carlos C. et al. v. The Superior Court of Marin County; Marin County Department of Social Services, R.P.I.**

The petitions for extraordinary relief are denied on their merits. (Cal. Const., art. VI, § 14; Kowis v. Howard (1992) 3 Cal.4th 888, 893-895 [written opinion on petition for extraordinary relief precludes further challenge to orders by petitioner in any subsequent appeal].) Because the section 366.26 hearing is set for May 8, 2001, our opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(d).) Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A090678 -- Conservatorship of the Estate of William M. Meagher.**

The trial court's order is affirmed and respondent shall have costs on appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A088989 -- John C. Paxton v. James Giller et al.**

The judgment is reversed. Costs on appeal to appellant. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Tuesday, April 3, 2001 (continued)

Division Four

**A093884 -- Barbara C. v. The Superior Court of Marin County; Marin County Department of Social Services, R.P.I.**

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the section 366.26 hearing is set for April 24, 2001, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Chiantelli, J.\* We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090048 -- Mary Moore Henry de Tessen v. Christine Boss.**

The purported appeals from the orders are dismissed. The judgment is reversed. Plaintiff shall recover her costs of appeal. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A086966 -- The People v. Fernando Murillo.**

The judgment of conviction is affirmed. Kay, J. I Concur: Reardon, Acting P.J. (See concurring opinion by Sepulveda, J.) (Not for Publication.)

Division Five

**A089473 -- John Kockos v. Chicago Title Company et al.**

The judgment of summary judgment in favor of Chicago Title and the Chuns are affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Tuesday, April 3, 2001

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., and Marchiano, J.; N. Millner, Deputy Clerk; and CHP officer T. Tam, Bailiff.

A090701      Phyllis A. Manley,  
                 v.  
                 Mathew Young, et al.  
Cause called and argued by James J. Scherer, counsel for appellant, and John Frederick Cavin, counsel for respondents. Cause ordered submitted.

A088751/  
A086430      Sung & Leung, et al.,  
                 v.  
                 Pacific Gas & Electric Company.

Legal Vison,  
v.  
Pacific Gas & Electric Company.  
Causes called and argued by Farley J. Neuman, counsel for appellants Sung & Leung, et al.; Susan Popik, counsel for appellant Legal Vision; and Randall G. Block, counsel for respondent. Cause ordered submitted.

A091539      Conservatorship of Ruth Wilson.  
                 Rosalie H. Rowsey,  
                 v.  
                 Jerome Berg.  
Cause called and argued by Jerome Berg, appellant in pro per, and Kathleen U. Poling, counsel for respondent. Cause ordered submitted.

A091648

Barbara Luhrs,

v.

Business Wire Inc.

Cause called and argued by Elizabeth Williams, counsel for appellant, and J. Neil Gielegem, counsel for respondent, via teleconference. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Tuesday, April 3, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J, Stein, J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP officer T. Tam, Bailiff.

Justice Marchiano did not participate in argument of the first case.

A092581      Ricardo Leyva,  
                         v.  
                         I. Brouch.

Cause called and argued by Ricardo Leyva, appellant in pro per, via teleconference, and Diann Sokoloff, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice Strankman left the bench. Justice Stein presided over the next case and Justice Marchiano joined in the argument.

A088178      Montie S. Day,  
                         v.  
                         Robert W. Mills.

Cause called and argued by Jerome B. Falk, counsel for appellant, and Bryce Clay Anderson, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice Strankman returned to the bench. Justice Marchiano left the bench.

A091927      Paul Daijo, et al.,  
                         v.  
                         Lev Ryvkin, et al.

Cause called and argued by Harold E. Kahn, counsel for appellants; David M. Sternberg, counsel for respondent Metropolitan Bank; and Roger Rubin, counsel for respondents Lev Ryvkin, et al. Cause ordered submitted.



A090741 Patricia Cuellar,  
v.  
Costco Wholesale, Inc., et al.  
Cause called and argued by Gregory M. Haynes, counsel for appellant, and Diane E. Baylor, counsel for respondents. Cause ordered submitted.

A092077 In re the Marriage of Hans.  
John Hans,  
v.  
Christine Hans.  
Cause called and argued by John Hans, appellant in pro per, and Carol Amyx, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, April 4, 2001

Division One

**A091290 -- The People v. James Charles Danis, Jr.**

The sentence of eight months for escape by force or violence is stayed. In all other respects the judgment is affirmed. The trial court is directed to send an amended abstract of judgment to the Department of Corrections. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A091711 -- In re Joshua T.C., a Person Coming Under the Juvenile Court Law.**

The order terminating parental rights is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A094232 -- Paul DeStafano v. The Superior Court of San Mateo County; Storage Technology Corporation, R.P.I.**

By the Court: The petition for writ of mandate /prohibition is denied. Kline, P.J.

**A090077 -- The People v. Freddric Ferguson.**

The judgment is affirmed. Haerle, J. We Concur: Kline, Acting P.J., Lambden, J. (Not for Publication.)

**A087893 -- The People v. Henry C. Hernandez.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A088119 -- The People v. George Edward Johnson.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Wednesday, April 4, 2001 (continued)

**A088931 -- The People v. Jimmy A. Quintanilla.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A093924 -- Arlene Robertson v. The Superior Court of Marin County; Peter S. Brooks, R.P.I.**

By the Court: Petitioner shall file a proper verification on or before April 12, 2001 in compliance with *Star Motor Imports, Inc. v. Superior Court* (1979) 88 Cal.App.3d 201. Kline, P.J.

**A088711 -- Mason Todd et al. v. Exxon Corporation.**

The judgment is affirmed. The parties are to bear their own costs for the appeal and cross-appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A094467 -- Billy Roy Tyler v. The Superior Court of San Mateo County.**

By the Court: The petition for writ of mandate is denied. Kline, P.J.

Division Four

**A090205 -- Adoption of Amelia Ann D., a Minor.**

The judgment terminating appellant's parental rights is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

**A087905 -- The People v. Rex Allen McCurdy.**

The order appealed from is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

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Division Five

**A090220 -- American Overseas International, Inc. v. Circle Trade Services Limited.**

The judgment is affirmed. Costs on appeal are awarded to respondent. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Thursday, April 5, 3001

Division One

**A091804 -- In re Ligh Ann H., a Person Coming Under the Juvenile Court Law.**

The dispositional order and judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A091648 -- Barbara Luhrs v. Business Wire et al.**

The post-judgment order awarding appellate costs and fees, incorporated in an amended judgment, is affirmed. The parties shall bear their own costs on this appeal. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

**A091539 -- Conservatorship of the Person and the Estate of Ruth Wilson.**

The order filed April 19, 2000, is affirmed. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

**A091539 -- Conservationship of the Person and Estate of Ruth Wilson.**

The order filed April 19, 2000, is affirmed. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

Division Two

**A085450 -- The People v. Jay Shawn Johnson.**

The judgment is reversed. Kline, P.J. I concur: Lambden, J. (Certified for Partial Publication.) (See Dissenting onion by Haerle, J.)

Thursday, April 5, 2001 (continued)

**A091181 -- Robert S. Kolodge v. Michael E. Boyd.**

For the foregoing reasons, we conclude there are triable issues of fact as to whether appellant made a full credit bid and, if he did, whether when he entered his credit bid he reasonably relied on respondent's 1992 appraisals. We also determine that, if it is found appellant made a full credit bid, the full credit bid rule does not foreclose appellant's causes of action for negligence and negligent misrepresentation, provided it is properly determined he reasonably relied on respondent's alleged misrepresentations of the value of the properties when he entered his bid at the foreclosure sale.

Accordingly, the judgment is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Publication.)

**A090868 -- In re Blaine M., a Person Coming Under the Juvenile Court Law.**

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A087629 -- In re Jeremy W., a Person Coming Under the Juvenile Court Law.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A091632 -- The People v. David Brian Acorn.**

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A086641 -- The People v. Layce Baker, Sr.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Thursday, April 5, 2001 (continued)

**A091837 -- In re the Marriage of Bradford's and Gail M. Taylor.**

The order is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A090386 -- The People v. Donatus Agbon Okhomina, Jr.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A091022 -- Phil Van Dalen v. California State Automobile Association.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, April 6, 2001

Division Two

**A094527 -- ADW Associates et al. v. The Superior Court of Alameda County; Alan Kropp & Associates, R.P.I.**

By the Court: The petition for writ of mandate/stay is denied. (Cal Const., art. 6, §10; Code Civ. Proc., § 1085 subd (b); Cal Rules of Court, rule 56; See *Kernes v. Superior Court* (2000) 77 Cal.App.4th 525.) Haerle, Acting P.J.

**A089898 -- The People v. Bobbie Ray Alexander.**

Having found error in the manner afforded by the trial court to responding to appellant's request for new counsel under *Marsden*, we invoke the remedy previously approved by this division in *People v. Stewart, supra*, 171 Cal.App.3d 388, and direct the trial court to proceed as follows: "Although the decision we reach here requires reversal of the judgment, it does not require an automatic retrial. Instead, we remand to the trial court to allow that court to more fully inquire into the basis for appellant's motion for new trial. If, after further inquiry, the court determines that appellant has presented a colorable claim of ineffective assistance, then the court must grant the motion for new trial or appoint new counsel to fully investigate and present the motion. If, on the other hand, further inquiry does not disclose a colorable claim, the motion for new trial may be denied and the judgment reinstated." (*Id.* at p. 398; see also *Kelley*, 52 Cal.App.4th *supra*, at p. 580.) Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A089298 -- The People v. Ronald M. Hughes.**

Finding no error in the trial court's determination to revoke appellant's probation, the judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A092200 -- The People v. Joseph Warren Johnson.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)



Friday, April 6, 2001 (continued)

**A088020 -- Marilyn Renfro et al. v. California Highway Patrol.**

The purported appeal from the order sustaining the CHP's demurrer is dismissed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A091479 -- The People v. Troy Quin Gregorio.**

The order revoking probation and imposing appellant's previously stayed prison term is affirmed. Horner, J.\* We Concur: McGuiness, P.J., OCorrigan, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, April 6, 2001 (continued)

Division Five

**A088783 -- Nina Ringgold v. Diana Richmond.**

The judgment and order are affirmed. Jones, P.J. We Concur: Stevens, J.,  
Simons, J. (Not for Publication.)

Monday, April 9, 2001

Division One

**A091616 -- The People v. Gonzalo Chavez.**

The judgment is affirmed. The matter is remanded to the trial court to reconsider appellant's custody credits in light of this opinion. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A089616 -- The People v. Jorge Rubio.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

**A088241 -- Frank C. Angelos v. Gem Potente.**

The judgment is affirmed. Costs are awarded to respondent. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089371 -- The People v. Gregory A. Comaroto.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088759 -- Arturo Flores v. City and County of San Francisco.**

The order of the superior court granting defendant summary judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Tuesday, April 10, 2001

Division One

**A088751 -- Sung & Leung et al. v. Pacific Gas & Electric Company, Inc.**

The order sustaining the demurrer to the class action complaint, and granting leave to amend to plead only individual causes of action, is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A085327 -- The People v. Lonnie E. Weathers.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on March 15, 2001, be modified in the following particulars. (See order.) There is no change in the judgment. The petition for rehearing is denied. Stein, Acting P.J. (Not for Publication.)

**A086430 -- Legal Vision et al. v. Pacific Gas & Electric Company, Inc.**

The order sustaining the demurrer to the class action complaint, and granting leave to amend to plead only individual causes of action, is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Division Two

**A093664 -- In re Nicholas M., a Person Coming Under the Juvenile Court Law.**

The petition for extraordinary relief is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 893-895 [written opinion on petition for extraordinary relief precludes further challenge to orders by petitioner in any subsequent appeal].) Because the section 366.26. hearing is set for April 16, 2001, our opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(d).) Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Tuesday, April 10, 2001 (continued)

Division Four

**A091500 -- -The People v. Dale Howard Johnson.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Certified for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A090509 -- The People v. Whitney Buchanan.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A090663 -- The People v. Fernander Thompson.**

The enhancement for personally using a weapon within the meaning of section 12022, subdivision (b) is stricken. Thus, appellant's sentence is reduced from 11 years, 4 months, to 10 years, 4 months. As modified, the judgment is affirmed. The trial court is ordered to prepare and to forward to the Department of Corrections, an amended abstract of judgment. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Wednesday, April 11, 2001

Division One

**A093148 -- In re Andres C., a Person Coming Under the Juvenile Court Law. The People v. Andres C.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, A.P.J.

**A091927 -- Paul Daijo et al. v. Metropolitan Bank et al.**

The judgment against Prudential and in favor of the Bank is reversed. In all other respects, the judgment subject to appeal is affirmed. Prudential may recover from the Bank, and the Ryvkins may recover from the Daijos, their allocated portion of costs of appeal. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A091591 -- The People v. Robert Calvin Holmes.**

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A091521 -- Robert Tayac v. City and County of San Francisco, et al.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, A.P.J.

**A090701 -- Phyllis Manley v. Matthew Adrian Young et al.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Wednesday, April 11, 2001 (continued)

Division Four

**A090631 -- The People v. Joseph David Arreguin.**

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A090475 -- Ethan Berry v. Kim Walker.**

The orders are affirmed. The parties will bear their own costs. Kay, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, April 12, 2001

Division One

**A091461 -- International Federation of Professional and Technical Engineers, Local 21, AFL-CIO et al. v. John L. Martin, as Airport Director, etc., et al.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A089102 -- International Paper Company et al. v. Agricultural Excess & Surplus Insurance Company et al.**

The order granting summary adjudication in favor of Certain Defendants, finding they had no duty to indemnify regarding the action filed by developer Malt, is affirmed. The summary judgment is reversed, and the matter is remanded for further proceedings in accordance with the discussion herein. The parties shall bear their own costs on appeal. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

**A091968 -- Maureen O'Toole v. University of California, Berkeley et al.**

The order of dismissal is reversed, and the matter is remanded to the trial court for further proceedings on appellant's first amended complaint. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A091276 -- The People v. Sonny James West.**

The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Division Two

**A094535 -- Industrial Underwriters Insurance Company et al. v. The Superior Court of Contra Costa County; Albert D. Seeno Construction Company, R.P.I.**

By the Court: The petition for writ of mandate/stay is denied. (*People v. Municipal Court (Ahnemann)* (1974) 12 Cal.3d 658, 660.) Haerle, Acting P.J.



Thursday, April 12, 2001 (continued)

**A094537 -- Richard Arce Javier v. The Superior Court of San Mateo County; The People of the State of California, R.P.I.**

The petition for writ of mandate is denied Haerle, J. Acting P.J.

**A094499 -- Judie Wilson v. Don Dao.**

The petition for writ of supersedeas/stay is denied. Haerle, Acting P.J.

Thursday, April 12, 2001 (continued)

Division Two

**A094590 -- Dennis Titus v. Superior Court of Alameda County; People of the State of California; R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied. (Pen. Code, § 1510.) Haerle, Acting P.J.

Division Three

**A094589 -- Ace Recovery Services Inc. et al. v. The Superior Court of Alameda County; County of Alameda, R.P.I.**

By the Court: The petition for writ of mandate and the related request for a stay are denied. (See *Sav-On-Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 5.) McGuiness, P.J., Corrigan, J. & Horner, J.\* participating.) McGuiness, P.J.

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090794 -- Mary Daugherty et al. v. Insignia Management Group Inc., et al.**

The February 28, 2000 order is reversed and the matter is remanded for further proceedings. Daugherty shall recover her costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A091184 -- Ginger Covert v. Rite Aide Corporation et al.**

We affirm the judgment. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A092453 -- The People v. Nehemiah Joseph Killingsworth.**

This court affirms the judgment. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Thursday, April 12, 2001 (continued)

**A091802 -- In re A. T., a Person Coming Under the Juvenile Court Law.**

Although the issue has not been properly tendered for appellate decision, we note that we have reviewed the record, including the hearing transcripts, and find ample evidence that the change of custody was in A.T.'s best interests. Accordingly the order granting DHS's petition for modification is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

## MINUTES

### COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

#### DIVISION FIVE

Thursday, April 12, 2001

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J. and Richard H. Sandvik, Deputy Clerk.

- A089937 Raymond Fong et al.  
v.  
John Brennan et al.  
Motion called and argued by John Brennan, appellant in pro per, and by John W.R. Wiley, counsel for respondents. Cause ordered submitted.
- A088071 John Metz  
v.  
The St. Paul Companies, Inc. et al.  
Cause called and argued by John Metz, appellant in pro per and by Donald W. Carlson and John Ingle, counsel for respondent. Cause ordered submitted.
- A091301 Al McVay  
v.  
Diane R. Stanton  
Cause called and argued by Al McVay, appellant in pro per and by Diane R. Staton, counsel for respondent. Cause ordered submitted.
- A090915 Marin Storage and Trucking, Inc.  
v.  
Benco Contracting & Engineering, Inc.  
Cause called and argued by Wallace M. Tice, counsel for appellant and by Gregory Hess McCormick, counsel for respondent. Cause ordered submitted.
- A088545 The People  
v.  
Paul Fiel Narvios  
Cause called and argued by Richard Such, counsel for appellant and by Jeffery M. Bryant, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A089230 The People

v.

Tommie Lee Jackson

Cause called and argued by A. Charles Dell'Ario, counsel for appellant and by Frances M. Dogan, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A090551 The People

v.

Gerald Garcia

Cause called and argued by Dennis P. Riordan, counsel for appellant and by Sharon G. Birenbaum, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A091846 The People

v.

Dristen Leigh Braz

Cause called and argued by James J. Lynch, Jr., counsel for appellant arguing by teleconference call, and by Ronald E. Niver, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court adjourned at 12:10 p.m.

Thursday, April 12, 2001 (continued)

Division Four

**A091825 -- The People v. John A. Mendillo**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

**A091042 -- Angelica T., a Person Coming Under the Juvenile Court Law.**

**A091707 -- San Francisco Department of Human Services v. Roman S.**

The orders appealed from are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Friday, April 13, 2001 (continued)

Division Three

**A086963 -- The People v. Samuel E. Bland.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J.,  
Corrigan, J. (Not for Publication.)

**A086777 -- The People v. Joshua Burnette Kramer et al.**

**A092103 -- In re Rick Eugene Kramer et al.**

The judgments are affirmed. McGuiness, P.J. We Concur: Parrilli, J.,  
Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief  
Justice pursuant to article VI, section 6 of the California Constitution.

**A089299 -- The People v. Tho Quang Ton.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J.,  
Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief  
Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A094566 -- In re Ali A., a Person Coming Under the Juvenile Court  
Law. San Mateo County Social Services Agency v. Shirley R. and Eva A.**

By the Court: Appellants' motion to reconsider and their purported appeal  
from denial of the motion constitute an improper attempt to revitalize an untimely  
appeal from the underlying order made May 27, 1999. Accordingly, the appeal is  
dismissed. Jones, P.J.

Monday, April 16, 2001

Division One

**A094179 -- Michele B. v. The Superior Court of Del Norte County; Social Services Department et al., R.P.I.**

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for April 20, 2001. Therefore, our decision is final in this court immediately. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A090741 -- Patricia Cuellar v. Costco Wholesale, Inc.**

Defendant's request for sanctions is denied. The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A092077 -- In re Marriage of Christine L. and John Hans.**

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A090288 -- Karen Wise v. Oea Aerospace, Inc.; National Union Fire Insurance Company.**

The summary judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

We notified the parties that we might act by issuing our peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) No useful purpose would be served by issuing an alternative writ and hearing oral argument. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1242.) Therefore, let a peremptory writ of mandate issue commanding respondent County of Marin Superior Court to set aside its March 22, 2001 Order After Hearing on Petition for Injunction Prohibiting Harassment in *Alvillar v. Lang* (CV 011075) and instead to enter its order denying the petition for an injunction. The parties shall bear their own costs.



**A094393 -- Christopher H. Lang v. County of Marin Superior Court;  
Therese F. Alvillar, R.P.I.**

By the Court: Therefore, let a peremptory writ of mandate issue commanding respondent County of Marin Superior Court to set aside its March 22, 2001 Order After Hearing on Petition for Injunction Prohibiting Harassment in *Alvillar v. Lang* (CV 011075) and instead to enter its order denying the petition for an injunction. The parties shall bear their own costs. The stay previously imposed shall remain in effect until the remittitur issues. This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) (Before Strankman, P.J., Swager, J., Marchiano, J.) (Not for Publication.)

Monday, April 16, 2001 (continued)

Division Two

**A091112 -- The McKellar Family LJBTC 1992 Trust v. Giselle G. McKellar; James A. McKellar, R.P.I.**

The order of March 20, 2000, denying the Trust's motion is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A093116 -- The People v. Gary Don Melson.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Four

**A089678 -- The People v. Vincent Evans.**

The judgment of conviction is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A090292 -- Michelle Hughes v. Argonaut Insurance Company.**

The WCAB has exclusive jurisdiction over all of Hughes's claims against Argonaut. Accordingly, we affirm the judgment of dismissal. Reardon, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Certified for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A090540 -- In re David C. and Bradley R., Persons Coming Under the Juvenile Court Law.**

The order terminating the mother's parental rights is affirmed. The appeal of the grandparents from the order denying their section 388 petition is dismissed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, April 16, 2001 (continued)

**A090446 -- As you Sow v. Michael DiPirro.**

The appeal from the April 26, 1999 order granting the motion to strike is dismissed. The award of attorney fees and costs to respondent is affirmed. Respondent shall recover costs on appeal. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, April 17, 2001

Division One

**A090907 -- Brian B. v. Jonathan Tampico.**

The judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A088887 -- Harbor House Café, Inc. v. California Indemnity Insurance Company.**

The judgment is reversed. Costs are awarded to appellant. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A092581 -- Ricardo Leyva v. I. Brouch.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A088892 -- My Friends, My Family, My Community. v. Fairmont Insurance Company et al.**

The judgment is affirmed. Costs are awarded to respondents. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A088093 -- The People v. Russell Steven Brown.**

The judgment is affirmed. Haerle, J. I Concur: Lambden, J. (See concurring opinion by Kline, P.J.) (Not for Publication.)

**A091900 -- Liem Le et al. v. County of Contra Costa.**

The summary judgment is affirmed. Costs on appeal to respondent. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A094559 -- Bank of America et al. v. The Superior Court of San Francisco County; Ivy Chiu, R.P.I.**

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

Tuesday, April 17, 2001 (continued)

Division Three

**A091844 -- The People v. Paul Alva.**

Order Granting Petition For Rehearing. By the Court: The petition for rehearing is granted. The opinion filed on March 27, 2001 is vacated. The parties are directed to file letters within 10 days indicating whether or not there has been compliance with the trial court's order pursuant to Penal Code section 1202.1. McGuiness, P.J.

**A093511 -- Pacific Bell v. Workers' Compensation Appeals Board and Louise Russell.**

By the Court:\* Therefore, this court deems a writ of review to have issued returnable forthwith. Only that portion of the Board decision after reconsideration of November 21, 2000, imposing in part a 10 percent penalty in the amount on \$7,000 is annulled. The matter is remanded to the Board to determine whether to exercise its discretion to take additional evidence solely for the purpose of rendering a new decision on applicant's petition for penalty under section 5814.

\*Before McGuiness, P.J., Corrigan, J., and Parrilli, J. (Not for Publication.)

Division Four

**A089672 -- The People v. Henok Ayele.**

The judgment is affirmed. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091318 -- Mary Rose Kaczorowski v. Board of Supervisors for the County of Mendocino; Don Perry et al., R.P.I.**

The order is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Certified for Publication.)

Tuesday, April 17, 2001 (continued)

Division Four

**A089187 -- Marie-Lorraine Muller et al. v. Jan Maakestad.**

The summary judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089053 -- Richard Soroori v. City of Menlo Park.**

The order is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Wednesday, April 18, 2001

Division One

**A090871 -- The People v. Paul Pedersen.**

The order is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

**A090493 -- Twin Peaks Improvement Association et al. v. City and County of San Francisco et al.; Sutro Tower, inc., R.P.I.**

The judgment denying the petition for writ of administrative mandate is affirmed. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

Division Two

**A090948 --International Federation of Professional and Technical Engineers, Local 21, AFL-CIO et al. v. Public Utilities Commission of the City and County of San Francisco et al.**

The appeal is dismissed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, April 18, 2001

The Court met at 9:30 a.m. in a special session held in the Contra Costa Board of Supervisors Board Room at 651 Pine Street, Room 107, Martinez, CA. Present: Kline, P. J., Haerle, J., Lambden, J., Ruvolo J. and S. Graham, Deputy Clerk

At this point in the proceedings, Presiding Justice Kline honored retired former Presiding Justice of Division Two, Wakefield Taylor, who is a long-time resident of Martinez. Justice Kline also indicated that the panel for the first two cases on calendar would include himself and Justices Haerle and Ruvolo and that the panel for the last case, would not include himself.

- A087395      The People  
                 v.  
                 Joseph Perry Deshon and  
                 Anthony Craver  
                 Cause called and argued by Ann Hopkins, counsel for appellant Craver and Herbert Wilkinson, Deputy Attorney General, counsel for respondent. Submission ordered deferred. Cause to be deemed submitted upon receipt of a copy of the trial exhibits and respondent's supplemental brief.
- A092363      Johnny King, et al.  
                 v.  
                 R. Briggs Wood  
                 Cause called and argued by Gerald Filice, counsel for appellants and Patrick McMahon, counsel for respondent. Cause ordered submitted.
- A091869      Fidelity National Title Insurance Co.  
                 v.  
                 Robert J. Cort  
                 Cause called and argued by Lawrence Townsend, counsel for appellant and Mark E. Schiffman, counsel for respondent. Cause ordered submitted.



Wednesday, April 18, 2001 (continued)

Division Four

**A090430 -- The People v. Eric William Warner.**

We adopt a modified version of the disposition in *People v. Garcia, supra*, 27 Cal.App.3d at pages 647-648 and reverse the judgment with directions as follows: If the People, within 30 days from the issuance of the remittitur, file a written demand for a new trial, such a trial shall take place; if no such demand is filed, the trial court shall proceed as if the remittitur constituted a finding of guilty of voluntary manslaughter on such 30th day and proceed to resentence appellant after appropriate proceedings. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.) (Not for Publication.)

Division Five

**A091215 -- In re Miguel A., a Person Coming Under the Juvenile Court Law.**

The judgment of the juvenile court is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A091301 -- Al McVay v. Alameda County Civil Service Commission; Alameda County Social Services Agency; R.P.I.**

The judgment of the trial court is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A090610 -- The People v. Jennifer Diane Napier.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, April 19, 2001

Division One

**A091757 -- The People v. Raymond Furtado Arruda.**

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

**A093613 -- In re Christos K., a Person Coming Under the Juvenile Court Law.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, P.J.

Division Two

**A093999 -- In re Theodore H., a Person Coming Under the Juvenile Court Law.**

The petition is denied. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A094592 -- In re Ahmad J. Hasan, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A094625 -- Household Finance Corporation et al. v. The Superior Court of Alameda County, Earl Nichols, R.P.I.**

By the Court: The petition for writ of mandate is denied. (Code Civ. Proc., § 405.39.) Kline, P.J.

**A094649 -- In re Johnny L. Lloyd, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Thursday, April 19, 2001 (continued)

**A089533 -- The Ratcliff Architects v. Vanir Construction Management, Inc., et al.**

By the Court: The written opinion which was filed on March 23, 2001, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Kline, P.J.

**A094651 -- City of San Bruno v. The Superior Court of San Mateo County; Airport Parking Services, Inc.; Airport Parking Services, Inc. R.P.I.**

By the Court: The petition for writ of mandate/stay is denied without prejudice as premature in that no written order has been signed by the trial court in compliance with Code of Civil Procedure section 437c, subdivisions (f) and (g). (See *Tera Pharmaceuticals, Inc. v. Superior Court* (1985) 170 Cal.App.3d 530, 532; *Continental Insurance Co. v. Superior Court* (1985) 165 Cal.App.3d 1069, 1071-1072; *Young v. Superior Court* (1986) 179 Cal.App.3d 28.) Kline, P.J.

**A094606 -- Laurie L. Strantz v. The Superior Court of Lake County; Lake County Title Company; R.P.I.**

By the Court: The petition for writ of prohibition/mandate is denied. Kline, P.J.

Thursday, April 19, 2001 (continued)

Division Three

**A091381 -- In re Juan Z., a Person Coming Under the Juvenile Court Law.**

The finding imposing a criminal street gang enhancement is reversed. Following remand, the juvenile court is to conduct a new dispositional hearing to calculate the proper maximum term of confinement. In reviewing the record on appeal, we are unable to determine the basis on which the court calculated the maximum period of confinement at three years six months. It appears as if the probation department, which stated in its report that the maximum period of confinement was “determined to be three years, six months,” employed a one-year term for violation of section 186.22, subdivision (d), in its determination. However, our review of the transcript of the dispositional hearing does not assist us in determining the basis for the court’s calculation. Obviously, if the court set the maximum period of confinement based in part on the section 186.22 enhancement, the court must modify its earlier order. We further direct the court to consider whether or not it is appropriate, in light of our reversal, to order appellant to register as a gang member, pursuant to section 186.30, subdivision (b)(3). McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Thursday, April 19, 2001

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline,P.J., Haerle, J., Lambden, J., and I. Santos, Deputy Clerk

- A091643      Elijah N. Mutuku,  
                  v.  
                  Willie Ray Simms.  
Cause called and Presiding Justice Kline asks counsels, Robert Nellessen, for appellant, and David Grabill, for respondent, to approach the bench. Justice Kline asks counsels regarding Stipulation to Dismiss that was only filed on April 18, 2001. Justice Kline indicates that the Motion to Dismiss will be taken under submission. Counsels given 5 days to submit letter brief regarding sanctions.
- A090416      The People,  
                  v.  
                  Rodney Kenneth Tornstrom.  
Cause called and argued by Charles Holzhauer, counsel for appellant, and Ann Wathen, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A088417      The People,  
                  v.  
                  Andrew Cliff Johnson.  
Cause called and argued by Scott Kauffman, counsel for appellant, and Rene Chacon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A090284      The People,  
                  v.  
                  David Alvin Lowrie.  
Cause called and argued by Eric Multhaup, counsel for appellant, and Juliet Haley, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Friday, April 20, 2001

Division One

**A080269 -- The People v. Charles Bennett.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A093657 -- In re the Marriage of Bernard and Linda Gore. Linda Gore v. Bernard Gore.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, A.P.J.

**A093483 -- The People v. Leonardo G.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, P.J.

**A088101 -- The People v. Raymond D. Jimmerson.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A092155 -- Jennifer L. Moses v. United States Fire Insurance Company.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A091075 -- The People v. Miguel Cifuentes.**

We affirm. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Friday, April 20, 2001 (continued)

Division Four

**A094330 -- Ginger Z. v. The Superior Court of Contra Costa County; Contra Costa County Social Services Department, R.P.I.**

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (I); Cal. Rules of Court, rule 39.1B(o); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) The request for a stay of the order terminating reunification services is denied. The request for a stay of the permanency planning hearing is denied as moot. As the hearing is set for May 1, 2001, our decision is final in this court immediately. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Division Five

**A094593 -- Eel River Sawmills, Inc. v. Workers' Compensation Appeals Board, Bonnie Cronquist et al.**

By the Court:\* Accordingly, the petition for writ of review is denied.

\*Before Jones, P.J., Stevens, J., and Simons, J. (Not for Publication.)

**A089230 -- The People v. Tommie Lee Jackson.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A088071 -- John Metz v. The St. Paul Companies, Inc., et al.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Monday, April 23, 2001

Division One

**A090448 -- In re the Marriage of Nancy Weres and Oleh Weres.**

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager. (Not for Publication.)

Division Four

**A089843 -- Estate of Fred Martin, Deceased.**

The order is affirmed. Kay, J. We Concur: Sepulveda, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, § 6 of the California Constitution.

**A090808 -- The People v. James Edwards McCray, Jr.**

Judgment affirmed. Reardon, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A083706 -- The People v. Albino Perez.**

**A088902 -- In re Albino Perez, on Habeas Corpus.**

The judgment is affirmed. The petition for writ of habeas corpus is denied. Chiantelli, J.\* We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Monday, April 23, 2001 (continued)

Division Five

**A090632 -- The People v. Norman Dean Pitts.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.  
(Not for Publication.)

**A090906 --In re Luke W., a Person Coming Under the Juvenile Court Law.**

The judgment is reversed. Jones, P.J. We Concur: Stevens, J., Simons, J.  
(Certified for Publication.)

Tuesday, April 24, 2001

Division Two

**A092929 -- The People v. Robert Steven Brewster.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A087714 -- The People v. Bradford Burbine.**

**A092468 -- In re Bradford Burbine, on Habeas Corpus.**

We reverse the conviction of Penal Code section 288, subdivision (a) in count II based on the court's failure to give a unanimity instruction, and remand the case to the trial court of resentencing. In all other respects, the judgment is affirmed. The petition for writ of habeas corpus is denied. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A092498 -- The People v. Roger Allan Dale.**

**A093639 -- In re Roger Allan Dale on Habeas Corpus.**

The judgment is affirmed. The victim restitution order is modified to reduce the restitution amount to \$1,389 and is affirmed in all other respects. The petition for writ of habeas corpus is denied. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A091851 -- The People v. Earl Thomas.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A091577 -- The People v. Manuel Aguilar.**

The trial court acted within its discretion in deciding that the sentence originally agreed to in defendant's plea bargain was inappropriate. The proper remedy in such a case was to allow the defendant to withdraw his no contest plea. The court did so, and therefore committed no error. The judgment and sentence are affirmed. Horner, J.\* We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Tuesday, April 24, 2001 (continued)

Division Four

**A092860 -- The People v. American Surety Company.**

The order appealed from is reversed. The trial court is directed to grant the motion to vacate the order forfeiting bail. Reardon, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090377 -- The People v. Terry Cook.**

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091597 -- The People v. Antipas Konou.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A091569 -- Harley Lamunyon v. Reliance Standard Life Insurance Co.**

The judgment is reversed in its entirety without prejudice to such renewed challenges to the bad faith cause of action as defendant may make on new, additional, or different facts. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

**A088561 -- The People v. Gregory Land.**

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, April 24, 2001 (continued)

**A092525 -- In re Stephen S., a Person Coming Under the Juvenile Court Law.**

The dispositional order is affirmed. Kay, J. We Concur: Sepulveda, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089984 -- Raymond Wong et al. v. Hawkins Ho et al.**

The order appealed from is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, April 24, 2001

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Kay, J., and Chiantelli, Assigned Judge from San Francisco County Superior Court; Channing Hoo, Deputy Clerk; CHP Officer Shelley Aldridge, Bailiff.

A091782      People  
                 v.  
                 Ronald Coleman  
Cause called. John Jordan argued for appellant Coleman. Moona Nandi argued for respondent. Cause submitted.

A088190      Patricia E. Patrick  
                 v.  
                 Unum Life Insurance Co.  
Cause called. Mark Schmidtke argued for appellant/cross-respondent Unum. Arnold Levinson argued for respondent/cross-appellant. Cause submitted.

At this point, the Court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J. and Chiantelli, Assigned Judge.

A089374      Larinele Sapinosa et al.  
                 v.  
                 McDonald's Restaurant et al.  
Cause called. Daniel U. Smith argued for appellants Sapinosa et al. George Murphy argued for respondents. Cause submitted.

A091143      In re the Marriage of MacSweeney and Wallace  
                 Chenoa MacSweeney  
                 v.  
                 Damian Wallace  
Cause called. Ipp appellant Chenoa MacSweeney teleargued. Ipp respondent Damian Wallace teleargued. Cause submitted.

At this point, the Court reconstituted itself to include Sepulveda, Acting P.J., Kay, J. and Chiantelli, Assigned Judge.

- A081463 Gladys S. Brewster et al.  
v.  
Duane Grummer et al.  
Cause called. Marian M. Johnston argued for appellants Brewster et al. Peter Dixon argued for respondents. Cause submitted.
- A091593 People  
v.  
James Ted Whittington  
Cause called. Richard J. Krech argued for appellant Whittington. Morris Lenk argued for respondent. Cause submitted.
- A090247 E.O.C. Ord et al.  
v.  
Lumberman's Mutual Casualty Company  
Cause called. Jonathan Wolf argued for appellants Ord et al. Bruce D. Celebreeze argued for respondent. Cause submitted.

The Court recessed at 11:40 a.m.

v  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, April 24, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J. and Chiantelli, Assigned Judge.; Pamela Aguilar, Deputy Clerk; CHP Officer Scott Mills, Bailiff.

A091760

Jamal Hassoon

v.

Jamal Shamieh

Cause called. Gregory M. Haynes argued for appellant Hassoon. Mark R. Mittelman argued for respondent. Cause submitted.

At this point, the court reconstitutes itself to include: Reardon, Acting P.J., Kay, J. and Chiantelli, Assigned Judge.

A090557

Carlos Quintero

v.

Stanley J. Stanek et al.

Cause called. Michael J. Kinane argued for appellant Quintero. Joanne E. Morrison argued for respondents. Cause submitted.

The Court adjourned at 2:10 p.m.

Division Five

**A089937 -- Raymond Fong et al. v. John N. Brennan, Susan Baldini.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.  
(Not for Publication.)



Wednesday, April 25, 2001

Division One

**A091539 -- Conservatorship of Ruth Wilson. Rosale H. Rowsey v. Jerome Berg.**

By the Court: The petition for rehearing is denied. Strankman, A.P.J.

Division Two

**A088867 -- The People v. Dennis Ray Hicks.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A091565 -- Roscoe C. Sibley and Fely R. Sibley v. Household Finance Corp.**

The judgment is affirmed. Respondent is awarded its costs on appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

**A089147 -- CCPA No. 1 v. County of Sonoma.**

The appeal and cross-appeal are dismissed. Each party to bear its own costs of appeal. Corrigan, J. We Concur: McGuinness, P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090566 -- The People v. Edward Eugene Hall.**

The firearm use enhancement imposed in connection with count three (illegal possession of a firearm by a felon) is stricken. The judgment is otherwise affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, April 25, 2001 (continued)

Division Four

**A086966 -- The People v. Fernando Murillo.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on April 3, 2001, be modified as follows: (See order.) These modifications do not effect a change in the judgment. The petition for rehearing is denied. Reardon, Acting P.J. (Not for Publication.)

**A093151 -- Allstate Insurance Company v. The Superior Court of Alameda County; K. Arlene Griffin et al.**

Let a peremptory writ of mandate issue commanding the Superior Court of the County of Alameda, in *K. Arlene Griffin et al. v. Allstate Insurance Company* (No. 819451-8) to modify its order of November 16, 2000, granting in part plaintiffs' motion to compel production of documents pursuant to plaintiffs' request for production of documents, numbers 1, 4, 8, 10, 11 by vacating that portion of its order which states "To the extent the Requests seek communications that post-date the determination of whether Allstate had an obligation to defend, the Motion is GRANTED" and to conduct further proceedings which are consistent with the views expressed in our opinion.

Plaintiffs shall bear the costs of this proceeding. (Cal. Rules of Court, rule 56.4.) The stay previously imposed shall remain in effect until the remittitur issues. (Cal. Rules of Court, rule 25(a).) This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Wednesday, April 25, 2001 (continued)

**A094138 -- Edward M. Alvarez v. The Oakland Athletics Baseball Company, LLC et al.; Roberts Landing, Inc., et al.**

The purported appeal is dismissed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

**A093118 -- Julianne Major v. Tibor E. Major.**

We affirm the award of attorney fees. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091143 -- In re the Marriage of Chenoa MacSweeney and Damian Wallace.**

The order is affirmed. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088509 -- Chhotubhai B. Patel v. Leaders in Community Alternatives, Inc.**

The judgment is affirmed. The matter is remanded to the trial court to determine whether Patel is entitled to attorneys fees for prevailing on appeal. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Thursday, April 26, 2001

Division One

**A088038 -- Michael H. Haas et al. v. Calaveras Asbestos, Ltd.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A088142 -- Deluxe Corporation v. Franchise Tax Board.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A090088 -- The People v. Leland Michael McGarity.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A089554 -- Woodrow Sloan v. Hubbell Incorporated.**

The judgment is affirmed. Costs on appeal are awarded to Hubbell. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A091460 -- Alfred Belli v. Mason McDuffie Real Estate, Inc., et al.**

The judgment is affirmed. Respondents shall recover their costs. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

**A091758 -- The People v. Bobby Gene Smith.**

The judgment is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, April 26, 2001 (continued)

Division Four

**A085932 -- Commercial Discount Associates et al. v. Harry Blumenthal et al.**

The judgment is affirmed. The parties shall bear their own costs on appeal. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090746 -- In re Jennifer M., a Minor.**

The judgment is affirmed. Kenneth is to recover his costs on appeal. Chiantelli, J.\* We Concur: Sepulveda, Acting P.J., Kay, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A092846 -- The People v. Robin Blount.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, April 27, 2001

Division One

**A090419 -- The People v. William Mooney.**

By the Court: The petition for rehearing is denied. Strankman, P.J.

Division Two

**A090586 -- John R. Connell et al. v. Parker E. Sorg et al.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A090549 -- The People v. Terry Lee Montgomery.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A088098 -- The People v. Clyde Nathaniel Slaughter.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Monday, April 30, 2001

Division One

**A091362 -- Arthur Chambers v. Philip Kay.**

Accordingly, the judgment in favor of respondent on the quantum meruit cause of action is reversed and the case is remanded to the trial court for proceedings not inconsistent with the views expressed herein. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Certified for Publication.)

**A091690 -- The People v. Sean Garland.**

Accordingly, the judgment is reversed, and the case is remanded to the trial court with directions to set aside appellant's no contest plea upon his request, reinstate the charges, and conduct further proceedings as may be appropriate. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A091280 -- The People v. Oscar Taylor Gensaw, Sr.**

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A094705 -- In re Terry D. Cranford, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A094713 -- In re Jason Richard Gray, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A090533 -- In re Roberto L., a Person Coming Under the Juvenile Court Law.**

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Monday, April 30, 20001 (continued)

**A092904 -- In re Rolando N., a Person Coming Under the Juvenile Court Law.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A094685 -- In re George Ruiz, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A094669 -- In re Robin Sharp, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus and motion for appointment of counsel and for trial transcripts are denied. Kline, P.J.

Division Three

**A091657 -- The People v. Eliodoro Dieguez.**

**A093252 -- In re Eliodoro Dieguez on Habeas Corpus.**

The judgment is affirmed, and the petition for writ of habeas corpus is denied. McGuiness, P.J. We Concur: Corrigan, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A092765 -- In re the Marriage of Geraldine F. Tracy and Anthony O. Ricucci.**

We reverse and remand for further proceedings in which the court can evaluate evidence concerning opportunities for appellant's employment and the earning capacity for both parties. Given that more than a year has passed since the trial court's decision, it will be in a position to take into account the parties' current employment situations. Each side shall bear its own costs on appeal. Horner, J.\* We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Monday, April 30, 2001 (continued)

**A092287 -- The People v. Sonia Hernandez.**

The appeal is dismissed for lack of jurisdiction. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A091465 -- Ray Slayton v. Boxer, Elkind & Gerson et al.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

**A091556 -- In re Daniella E., a Person Coming Under the Juvenile Court Law. The People v. Daniella E.**

The order adjudicating appellant a ward of the court pursuant to Welfare and Institutions Code section 602 and placing her on probation in the home of her mother is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A091846 -- The People v. Kristen Leigh Braz.**

The order of restitution is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)